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FEDERAL COMMUNICATIONS COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before The

Federal Communications Commission

Washington, D.C. 20554

In The Matter Of

Rulemaking to Amend Part 1 and
Part 21 of the Commission's Rules
to Redesignate the 27.5 - 29.5 GHz
Frequency Band and to
Establish Rules and Policies for
Local Multipoint Distribution Service

CC Docket No. 92-297
RM-7872; RM-7722

TO: The Commission

**REPLY COMMENTS
OF VICTOR RUMORE**

Victor Rumore, by counsel, hereby respectfully submits his reply comments in the above-referenced rulemaking proceeding. In support thereof, the following is submitted:

Selection Process. Mr. Rumore indicated in his initial comments that he favored the FCC's proposal to select applicants by lottery, and emphasized his concern that use of competitive bidding, if permitted by Congress, would favor well-heeled telecommunications companies. He also expressed his concern that bidding would inflate start-up costs to the detriment of consumers. It is not surprising, therefore, that the two companies supporting competitive bidding and auctions in their comments were BellSouth and Ameritech.

BellSouth, at page 11 of its comments, claimed that "auction prices will drive service applications towards their highest and best use in the marketplace. . . ." Ameritech, at page 7 of its comments, summarizes

competitive bidding in these words: "The single criterion for choosing a winner would be objective -- price." Mr. Rumore submits the public interest in diversity and competition warrant consideration of applicants on criteria other than price. Driving auction prices to the highest bidder will not serve the interests of diversity or competition if the ultimate winners of such auctions are former Regional Bell Operating Companies.

Structure of Band. Considering the interest expressed by the telephone companies,¹ with at least one suggesting that the Local Exchange Carriers be permitted to integrate LMDS into their existing operations,² and the Commission's desire to encourage competition in the video marketplace with franchised cable companies through the implementation of LMDS,³ it is essential that the Commission allot sufficient spectrum for the independent, non-wireline LMDS operator to compete effectively. Some parties advocate that less than 1,000 MHz be provided per LMDS licensee.⁴ Mr. Rumore urges the Commission to

¹ A dozen comments were filed by companies favoring the interests of Local Exchange Carriers: BellSouth, Ameritech, U.S. West Communications, Pacific Telesis Group, Sprint, NYNEX Mobile Communications Company, Bell Atlantic Personal Communications, Inc., GTE Service Corporation, United States Telephone Association, Telephone and Data System, Inc., Rochester Telephone Corporation, and, jointly, Rock Hill Telephone Company, Fort Mill Telephone Company, and Lancaster Telephone Company.

² See Comments of Telephone and Data System, Inc., at p.4.

³ *Notice of Proposed Rulemaking, Order, Tentative Decision and Order on Reconsideration*, 8 FCC Rcd. 557, 559 (1993)(¶ 16)(hereinafter "NPRM").

⁴ Specifically, United States Telephone Association suggests that 1,000 MHz for two operators is overly generous. USTA Comments at pp. 4-5. Rock Hill Telephone Company, *et al.*, favor two blocks of 500 MHz each for LMDS operators. Rock Hill Comments at p. 2. Box Spring Educators argues that 1,000 MHz per operator is too large and suggests that there should be two licensees having 34 video channels in one polarization direction and two other licensees with 15 video channels in each service area. Box Spring Educators' Comments at p. 1.

allocate, at a minimum, 1,000 MHz to the commercial LMDS operator. A minimum of 49 channels available for video programming is necessary to compete with cable operators, some of which now have capacity to offer 150 channels. To reduce the amount of spectrum available to a commercial LMDS operator would render LMDS the second class choice of consumers.

Deferral of Rulemaking. Finally, Mr. Rumore opposes NASA's proposal to defer the LMDS rulemaking proceeding for five years,⁵ which it hopes will be sufficient time for demand to develop for Fixed Satellite Service ("FSS") usage of the 28 GHz band spectrum subject to re-allocation in this proceeding to LMDS. Demand for other than point-to-point microwave and FSS use of this spectrum already exists, as evidenced by the 971 requests for waiver the Commission dismissed in the *NPRM* and the strong expressions of interest in LMDS asserted by nearly 90% of the parties commenting in this proceeding. To delay

In light of the overwhelming expression of interest expressed in this proceeding, Victor Rumore respectfully requests that the Commission redesignate the 27.5 - 29.5 GHz band for LMDS use.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Barbara L. Rascon, a secretary in the law offices of Haley, Bader & Potts, hereby certify that I have on this 15th day of April 1993, sent copies of the foregoing **"REPLY COMMENTS OF VICTOR RUMORE"**, by first-class, United States mail, postage prepaid, to the following:

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